

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF AN APPLICATION	:	APPLICATION FOR A
FOR A PROTECTIVE ORDER CONCERNING	:	<u>PROTECTIVE ORDER</u>
CONFIDENTIAL MATERIAL TO BE	:	
DISCLOSED BY THE GOVERNMENT IN	:	
<u>UNITED STATES v. SERGEY ALEYNIKOV,</u>	:	
09 MAG. 1553	:	
- - - - -	x	

JOSEPH P. FACCIPONTI, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Preet Bharara, United States Attorney for the Southern District of New York. I submit this affirmation in support of an application for a protective order to govern discovery in United States v. Sergey Aleynikov, 09 Mag. 1553. I make this application with the consent of Sabrina Shroff, Esq., counsel for Sergey Aleynikov ("Aleynikov").

2. On July 3, 2009, Aleynikov was arrested and, on July 4, 2009, was charged in Complaint 09 Mag. 1553 (the "Complaint") with theft of trade secrets and foreign transportation of stolen property. Also on July 4, 2009, Aleynikov was presented before the Honorable Kevin Nathaniel Fox, United States Magistrate Judge for the Southern District of New York, who ordered that Aleynikov be released upon the satisfaction of certain bail conditions. On July 6, 2009, Aleynikov satisfied those conditions and was released.

3. In the Complaint, Aleynikov is alleged to have stolen computer code related to the automated high-speed trading platform used by a major financial institution. Prior to June 2009, Aleynikov was employed by the financial institution as part of a team responsible for developing and maintaining the trading platform. According to the Complaint, the financial institution has spent many millions of dollars to develop the trading platform.

4. Since his arrest, Ms. Shroff and I have engaged in negotiations regarding a possible disposition of this matter. Because of these negotiations, Aleynikov has consented, through his counsel, to extend the time under the Speedy Trial Act for the Government to file an indictment or information so that the parties may continue the negotiations. The current deadline to file an indictment or an information is September 16, 2009; however, with the consent of Aleynikov and his attorney, the Government intends to seek an additional 30-day extension of that deadline.

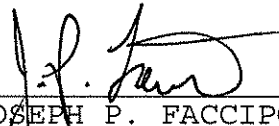
5. The Government intends to voluntarily produce certain information related to this case to Aleynikov's counsel, which may include trade secrets belonging to the financial institution. Accordingly, with the consent of Aleynikov's

attorney, the Government seeks to have the production of this material be governed by the attached proposed protective order.

6. This is the first time the Government has sought the relief requested herein.

I declare under penalties of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Dated: New York, New York
September 10, 2009



JOSEPH P. FACCIPONTI
Assistant United States Attorney
(212) 637-2552

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF AN APPLICATION : PROTECTIVE ORDER
FOR A PROTECTIVE ORDER CONCERNING :
CONFIDENTIAL MATERIAL TO BE :
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UNITED STATES v. SERGEY ALEJNIKOV, :
09 MAG. 1553 :
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On the motion of the United States of America, Preet Bharara, United States Attorney for the Southern District of New York, by Joseph P. Facciponti, Assistant United States Attorney, of counsel ("the Government"), and with the consent of Sergey Aleynikov, by his counsel, Sabrina Shroff, Esq.;

IT IS HEREBY DETERMINED that, on July 3, 2009, Aleynikov was arrested and, on July 4, 2009, was charged in Complaint 09 Mag. 1553 with theft of trade secrets and foreign transportation of stolen property;

IT IS FURTHER DETERMINED that, on July 4, 2009, Aleynikov was presented before the Honorable Kevin Nathaniel Fox, United States Magistrate Judge for the Southern District of New York, who ordered that Aleynikov be released upon the satisfaction of certain bail conditions and that, on July 6, 2009, Aleynikov satisfied those conditions and was released; and

IT IS FURTHER DETERMINED that Aleynikov, through his attorney, has engaged in negotiations with the Government and has agreed to extend the time under the Speedy Trial Act for the Government to file an indictment or information so that the parties may continue the negotiations;

IT IS HEREBY ORDERED:

1. Copies of certain materials (including, but not limited to, computer hard drives and other material seized by the Government), which the Government may produce voluntarily to Aleynikov's attorney prior to the filing of an indictment or information, are deemed "Confidential Information." To designate material covered by this Order, the Government shall so designate, on the material itself, in an accompanying cover letter, or on a diskette cover, by using the following designation: "Confidential Information - Subject to Protective Order."

2. Confidential Information disclosed to defense counsel pursuant to this Order:

(a) Shall be used only in connection with proceedings in United States v. Sergey Aleynikov, 09 Mag. 1553, or in any criminal action in which an indictment or information containing charges related to the allegations in Complaint 09 Mag. 1553 is filed against Aleynikov;

(b) Shall be kept in the sole possession of Aleynikov's attorney and shall not be disclosed in any form by Aleynikov's attorney except as set forth in paragraph 2(c) below;

(c) May be disclosed by Aleynikov's attorney only to the following persons (hereinafter "Designated Persons"):

- (i) Aleynikov;
- (ii) investigative, secretarial, clerical, and paralegal personnel employed full-time or part-time by Aleynikov's attorney; and
- (iii) independent expert witnesses, investigators or advisors retained by Aleynikov's attorney in connection with this action;

(d) Shall be returned to the Government following the conclusion of this case and any all copies made of said material shall be shredded and destroyed;

(e) Shall not be reviewed by Alyenikov except in the presence of his attorney or another Designated Person, and at no time shall Alyenikov be given custody of the Confidential Information or any copies thereof;

(f) Shall not be transmitted between and among Alyenikov's attorney and Designated Persons over the Internet or by e-mail.

3. Aleynikov's attorney shall provide a copy of this Order to Designated Persons to whom she discloses information pursuant to paragraphs 2(c)(i), (ii) and (iii). Designated Persons shall be subject to the terms of this Order.

4. If Ms. Shroff and the Federal Defenders of New York, Inc., are relieved as counsel for Aleynikov, then the Confidential Information and any copies thereof will be returned to the Government unless replacement counsel agrees to be subject to this Order.

5. The provisions of this Order shall not be construed as preventing the disclosure of Confidential Information to any judge or magistrate of this Court in any motion, hearing, trial, or sentencing proceeding held in United States v. Sergey Aleynikov, 09 Mag. 1553, or any criminal action in which an indictment or information containing charges related to the allegations in Complaint 09 Mag. 1553 is filed against Aleynikov.

Dated: New York, New York
September 19, 2009

SO ORDERED:


UNITED STATES DISTRICT JUDGE
Law I

AGREED AND CONSENTED TO:



SABRINA SHROFF, Esq.
Attorney for SERGEY ALEYNIKOV

9/9/9-

Date